

JOHN J. PHELAN, III, P.C.

ATTORNEY AT LAW

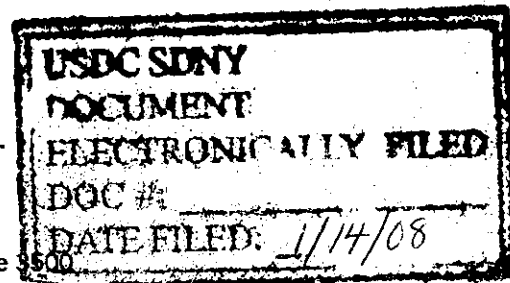
1285 AVENUE OF THE AMERICAS, Suite 3500

NEW YORK, NY 10019

PHONE (212) 315-3082

Fax (212) 315-3028

e-mail: jphelaniii@ATT.Net



January 14, 2008

Via Fax (212) 805-7933

Hon. Andrew J. Peck  
U.S. Magistrate Judge  
United States District Court  
Southern District of New York  
U.S. Courthouse, Room 1370  
500 Pearl Street  
New York, NY 10007

**MEMO ENDORSED** *JP*

Re: Procapui v. Layani et al. 07 Civ. 6627

Dear Magistrate Judge Peck:

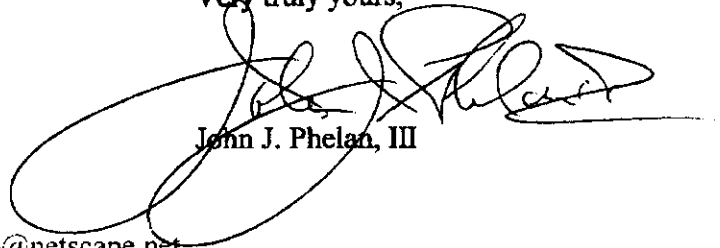
Acting with undue haste, I wrote to the Magistrate Judge this morning requesting a suspension of discovery in light of the Court's decision to dismiss the complaint in this action with leave to replead. In so doing, I overlooked the direction of the Court appearing on the top of page 14 of her decision that "... discovery and any other further proceedings in this matter are stayed" pending either the filing of Plaintiff's amended complaint or, in the absence thereof, a hearing on the one remaining jurisdictional issue. Accordingly, that issue has been dealt with. I apologize for any inconvenience to the Court or the other parties or counsel.

It is to be noted, however, that after writing this morning's letter to the Magistrate, I discovered that disks containing scanned copies of the documents reviewed by Plaintiff's counsel and me in Boston on Friday, have already been delivered to Mr. DeMaio. Since the Court's decision was issued and filed on Friday, although it was not published on PACER/ECF until today, the complaint had already been dismissed and the stay of discovery imposed at that point. Plaintiff's counsel should not have received and should not now benefit from the fruits of that discovery.

The Higgins parties seek a direction from the Magistrate to Mr. DeMaio directing him to return the disks, without retaining copies thereof or of any part of their contents to the respective witnesses that produced them, i.e, Sovereign Bank's documents to Sovereign and Boston Bay Broker's documents to Boston Bay where they can be retained until further notice or until the Court finally dismisses the action

Thank you very much.

Very truly yours,



John J. Phelan, III

cc. via email

Luigi DeMaio, Esq.; [luigidemaio@netscape.net](mailto:luigidemaio@netscape.net)  
Attorney for Plaintiff

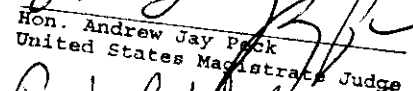
Lawrence R. Lonergan, Esq.; [llonergan1@aol.com](mailto:llonergan1@aol.com)  
Attorney for Defendant Rubin

Defendant Noel Blackman: [noelblackman@sbcglobal.net](mailto:noelblackman@sbcglobal.net)

## MEMO ENDORSED

1. Plaintiff's counsel is to enter  
(a) give the disks to the bank for  
storage or (b) place the disks in a  
witness envelope, not to be given unless  
Judge allows doing otherwise, the  
party to submit a written offer of need.  
P.E. 20 215 copy is needed.

SO ORDERED:

  
Hon. Andrew Jay Peck  
United States Magistrate Judge

BY FAX

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

**Dated:** January 14, 2008

**Total Number of Pages:** 3

TO	FAX NUMBER
John J. Phelan, III, Esq.	212-315-3028
Luigi P. De Maio, Esq.	212-889-1391
Lawrence R. Lonergan, Esq.	212-366-6950
Noel J. Blackman	281-256-9433

## **TRANSCRIPTION:**

### **MEMO ENDORSED 1/14/08**

1. Plaintiff's counsel is to either (a) give the disks to Mr. Phelan for safekeeping or (b) place the disks in a sealed envelope, not to be opened unless Judge Jones allows discovery to proceed, and be prepared to submit a compliance aff. if needed.
2. The 2/15 conference is cancelled.

**Copy to:** Judge Barbara S. Jones